

## 8 Am. Jur. 2d Automobiles § 409

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### Automobiles and Highway Traffic

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### VI. Civil Liability Arising from Operation of Vehicle


#### A. In General

##### 1. Overview

## § 409. What law governs determination of liability arising from operation of vehicle; traditional rule of “lex loci delicti”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  229.5

### A.L.R. Library

[Modern status of choice of law in application of automobile guest statutes, 63 A.L.R.4th 167](#)

[What is place of tort causing personal injury or resultant damage or death, for purpose of principle of conflict of laws that law of place of tort governs, 77 A.L.R.2d 1266](#)

### Trial Strategy

[Divider Line Automobile Accident Cases, 10 Am. Jur. Trials 493](#) § 14 (Choice of forum)

### Forms

Forms relating to non-resident motorist, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw®\(r\) Search Query\]](#)

The traditional rule which has determined the law applicable in suits for negligence in the event of a conflict between the rules of different jurisdictions, is that of “lex loci delicti”—that one's liability for negligence is governed by the law of the state where the tort, injury, or wrong occurred.<sup>1</sup> This rule still prevails in many jurisdictions with respect to one's liability for negligence in the operation of a motor vehicle,<sup>2</sup> even where the place of the negligent act or omission causing the accident occurs in another state.<sup>3</sup>

**Practice Tip:**

In cases arising out of negligence in the operation of motor vehicles, there is a rebuttable presumption that the lex loci delicti rule will apply to a determination as to the choice of law.<sup>4</sup>

At least under one state's choice-of-law standards for diversity actions, when the passenger and the driver are domiciled in different states, normally, the applicable rule of decision will be that of the state where the accident occurred, but not if it can be shown that displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multistate system or producing great uncertainty for litigants.<sup>5</sup> Moreover, where the state in which the injury was sustained has no interest in defeating the additional security provided to the injured person by the application of a statute from the state where the tortfeasor resides, and where the public policy of the two states with respect to the compensation of innocent victims in automobile accidents is similar, enforcement of the statute will not offend the public policy of the state where the accident occurred.<sup>6</sup>

Under the lex loci delicti rule, where the issue is the choice between the law of the state where the allegedly wrongful act or omission took place, and the state where the injury or death was inflicted, the general rule is that the state of the tort is the state where the injury or death was inflicted.<sup>7</sup>

**Observation:**

The interest of a state in deterring drivers from speeding and driving recklessly on its roads and highways, as a factor in a choice-of-law analysis for tort action arising from a motor vehicle accident occurring in the state, is diminished when the offending conduct occurs during a brief entry into the state and when any accident that occurs as a result of the undue speed or recklessness does not involve a state resident.<sup>8</sup>

Generally, in determining the appropriate law to apply when an accident occurs in one state and an uninsured motorist insurance contract has been entered in another, the law of the place of the accident applies to determine the plaintiff's right to recover from the negligent party, and the law of the place of the contract, the *lex loci contractus*, applies to interpret the terms of the contract.<sup>9</sup>

The law of the state where the automobile accident occurred, rather than the state where the victim and tortfeasor resided, governs the right to recover for loss of consortium and loss of services and, therefore, governs the liability of the tortfeasor's insurer, and the domicile of the parties and the registration of the automobiles in the other state does not rebut the presumption of *lex loci delicti*.<sup>10</sup>

Jurisdictions applying the traditional *lex loci delicti* rule have recognized two exceptions to its application: first, the law of the forum is applied to procedural matters; and second, the law of the forum is controlling whenever the law of the place of the wrong is contrary to an extraordinarily strong public policy of the forum state.<sup>11</sup> Thus, in cases arising out of negligence in the operation of motor vehicles, the law of the forum is applied with respect to procedural matters.<sup>12</sup>

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#### Footnotes

- 1 Am. Jur. 2d, Conflict of Laws § 108.
- 2 *Arraj v. U.S.*, 95 F. Supp. 3d 150 (D. Mass. 2015); *Fitzgerald v. Austin*, 715 So. 2d 795 (Ala. Civ. App. 1997); *Denton v. Universal Am-Can, Ltd.*, 2015 IL App (1st) 132905, 389 Ill. Dec. 358, 26 N.E.3d 448 (App. Ct. 1st Dist. 2015); *Rexroad v. Greenwood Motor Lines, Inc.*, 36 N.E.3d 1181 (Ind. Ct. App. 2015); *Kortobi v. Kass*, 182 Md. App. 424, 957 A.2d 1128 (2008), judgment *aff'd*, 410 Md. 168, 978 A.2d 247 (2009); *Parrott v. Severs Trucking, LLC*, 422 S.W.3d 478 (Mo. Ct. App. S.D. 2014); *Dillon v. Frazer*, 383 S.C. 59, 678 S.E.2d 251 (2009).
- 3 *Fitzgerald v. Austin*, 715 So. 2d 795 (Ala. Civ. App. 1997).
- 4 *Melton v. Stephens*, 13 N.E.3d 533 (Ind. Ct. App. 2014), transfer denied, 26 N.E.3d 982 (Ind. 2015).
- 5 *Berkan v. Penske Truck Leasing Canada, Inc.*, 535 F. Supp. 2d 341 (W.D. N.Y. 2008) (applying New York law).
- 6 *Motor Club of America Ins. Co. v. Hanifi*, 145 F.3d 170 (4th Cir. 1998) (applying Maryland law).
- 7 *Strogoff v. Motor Sales Co.*, 302 Mass. 345, 18 N.E.2d 1016 (1939).
- 8 *Jaiguay v. Vasquez*, 287 Conn. 323, 948 A.2d 955 (2008).
- 9 *Wilkeson v. State Farm Mut. Auto. Ins. Co.*, 2014-NMCA-077, 329 P.3d 749 (N.M. Ct. App. 2014).  
As to uninsured motorist insurance, see Am. Jur. 2d, Automobile Insurance §§ 1 et seq.
- 10 *State Farm Mut. Auto. Ins. Co. v. Brazzle ex rel. Estate of Jackson*, 2002-Ohio-1931, 2002 WL 471180 (Ohio Ct. App. 1st Dist. Hamilton County 2002).
- 11 Am. Jur. 2d, Conflict of Laws § 110.
- 12 *Grant v. McAuliffe*, 41 Cal. 2d 859, 264 P.2d 944, 42 A.L.R.2d 1162 (1953).

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